

UNITED STATES DISTRICT  
COURT SOUTHERN DISTRICT  
OF FLORIDA MIAMI DIVISION

CASE NO.: 22-cv-22538-ALTMAN/REID

PIERCE ROBERTSON, *et al.*, on  
behalf of himself and others similarly  
situated,

Plaintiffs,  
v.

MARK CUBAN, *et al.*,

Defendants.

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**PLAINTIFFS' EXPEDITED MOTION TO EXTEND THE DEADLINES FOR  
PLAINTIFFS TO OPPOSE DEFENDANTS' MOTION TO DISMISS OR TO MOVE  
FOR LEAVE TO AMEND THE COMPLAINT**

Plaintiffs, PIERCE ROBERTSON, et al. ("Plaintiffs"), pursuant to Local Rule 7.1(d)(2) respectfully moves the Court on an expedited basis to enter an order on or before on or before January 3<sup>rd</sup>, 2023, to Extend the Deadlines for Plaintiffs to Oppose Defendants' Motion to Dismiss or to Move for Leave to Amend the Complaint. Plaintiffs seek the Order on an expedited basis because, as explained below, Defendants have now reneged on their agreement made before Magistrate Judge Reid at the December 20<sup>th</sup> Discovery Hearing to submit this request as a stipulation/joint motion, considering Magistrate Judge Reid's rulings at the Discovery Hearing. In support of this request for an expedited ruling, Plaintiffs submit as follows:

1. On November 18, 2022, the Court entered its Order denying Defendants' motion to stay all discovery pending their motion to dismiss. ECF No. 45.

2. The same day, the Parties filed their Joint Scheduling Report. ECF No. 46.

3. Plaintiffs then filed their Motion for Brief Extension of Time and Page Limits to Respond to Defendants' Motion to Dismiss, ECF No. 48, seeking an extension of time to take jurisdictional discovery in order to test the statements made in the Defendants' declarations attached to their Motion to Dismiss in support of their arguments that the Court lacks personal jurisdiction over the Defendants.

4. On December 7, 2022, the Court entered its Scheduling Order, ECF No. 58, and an Order granting Plaintiffs' request in part, ECF No. 59. Together, these orders gave Plaintiffs until January 3, 2023, to file their Opposition to Defendants' Motion to Dismiss and until January 24, 2023, to file all motions to amend pleadings or to join parties. The Scheduling Order further states that "The parties may, by agreement or with the consent of [Magistrate Judge Reid], extend any deadline relating to fact or expert discovery so long as that extension does not interfere with any of the other deadlines contained in this Scheduling Order." ECF No. 58 at 2. The Order on Plaintiffs' Motion further directed Plaintiffs to raise any of their discovery issues, including to compel jurisdictional discovery, responses to Plaintiffs' discovery requests to Defendants, and entry of a confidentiality order governing discovery, with Magistrate Judge Reid. ECF No. 59.

5. On December 20, 2022, Magistrate Judge Reid held an extensive Discovery Hearing where she heard argument on all of the Parties' present discovery disputes. As a result of that hearing, Magistrate Judge Reid made the following rulings:

- a. Magistrate Judge Reid would enter a protective order governing treatment of confidential and highly confidential information produced in discovery;<sup>1</sup>
- b. Defendants shall produce all documents regarding Defendants' contacts with the State of Florida on or before January 3, 2023;
- c. Defendants shall produce all documents and responses to Plaintiffs' discovery requests (served November 7, 2023) on or before January 13, 2023;
- d. Plaintiffs shall respond to Defendants' Discovery Requests by their current due date, December 22, 2022;<sup>2</sup>
- e. Defendant Mark Cuban shall be made available for deposition on a mutually agreeable date between February 1, 2023, and February 10, 2023;<sup>3</sup>
- f. The depositions of Ryan Mackey (Senior Vice President of Corporate Partnerships for the Mavericks), Kyle Tapply (Senior Director of Corporate Partnerships for the Mavericks), and the Florida resident Plaintiffs/Putative Class

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<sup>1</sup> Magistrate Judge Reid has since entered that order, ECF No. 65, but only after first needing to remove a sentence that Defendants unilaterally added to the order *after* it was agreed to that would have granted a blanket "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" designation to *all* deposition transcripts in this matter, without explanation.

<sup>2</sup> Plaintiffs served their responses when they were due and are compiling and processing the documents for production.

<sup>3</sup> Defendants have yet to confirm a date, despite Plaintiffs' repeated requests to confirm a date since that December 20<sup>th</sup> hearing.

Representatives, shall take place on mutually convenient dates and locations (including by Zoom) between January 16, 2023, and January 31, 2023.

6. In light of the foregoing rulings and agreements, and in accordance with the Court's Scheduling Order, the Parties initially agreed on the record before Magistrate Judge Reid that they would jointly file this request as a Stipulation seeking an Order from this Court extending the deadlines for Plaintiffs to either file an Opposition to Defendants' Motion to Dismiss, [ECF No. 41], or a Motion for Leave to File an Amended Complaint by on or before Friday, February 24, 2022, so that the Parties could complete the discovery (on both sides) relating to the jurisdictional issues before Plaintiffs could determine whether to respond to the motion to dismiss or move for leave to file an amended complaint to, among other things, include additional jurisdictional allegations and/or join in additional plaintiffs and defendants.

7. Defendants have since informed Plaintiffs, by email dated today at 1:03pm, that despite the fact that Defendants rely on two declarations from Defendants made under penalty of perjury to support their motion to dismiss—yet refused before the discovery hearing to allow depositions to test those sworn statements, and now argue that they require the depositions of Plaintiffs in order to further create new grounds to argue that the complaint should be dismissed for their reply brief, that “to avoid any confusion, Defendants' position is that Plaintiffs' response to the Motion to Dismiss remains due, as ordered by Judge Altman, on January 3, 2023.”

8. Given Defendants' sudden reversal of position, Plaintiffs now file this request in good faith and not for the purposes of delay.

### **CONCLUSION**

Plaintiffs respectfully request that this Court grant Plaintiffs' Expedited Motion on or before January 3, 2023, and enter the proposed Order attached as **Exhibit A**, or in such other form as the Court deems appropriate, extending the deadlines for Plaintiffs to either file an Opposition to Defendants' Motion to Dismiss, [ECF No. 41], or a Motion for Leave to File an Amended Complaint by on or before Friday, February 24, 2023, together with such other and further relief as the Court deems just, equitable, and proper.

### **S.D. FLA. L.R. 7.1 CERTIFICATION**

Plaintiffs' Counsel have made reasonable efforts to confer with Defendants' Counsel in a good faith effort to resolve this motion, and report that Defendants have now decided to renege on their agreement in front of Magistrate Judge Reid to submit this motion as a stipulation/joint motion.

Dated: December 28, 2022

Respectfully submitted,

By: /s/ Adam Moskowitz  
Adam M. Moskowitz  
Florida Bar No. 984280  
adam@moskowitz-law.com  
Joseph M. Kaye  
Florida Bar No. 117520  
joseph@moskowitz-law.com  
Barbara C. Lewis  
barbara@moskowitz-law.com  
Florida Bar No. 118114  
**THE MOSKOWITZ LAW FIRM, PLLC**  
2 Alhambra Plaza, Suite 601  
Coral Gables, FL 33134  
Telephone: (305) 740-1423

By: /s/ David Boies  
David Boies  
(Admitted *Pro Hac Vice*)  
**BOIES SCHILLER FLEXNER LLP**  
333 Main Street  
Armonk, NY 10504  
Phone: (914) 749-8200  
dboies@bsflp.com

By: /s/ Stephen Neal Zack  
Stephen Neal Zack  
Florida Bar No. 145215  
**BOIES SCHILLER FLEXNER LLP**  
100 SE 2nd St., Suite 2800  
Miami, FL 33131  
Office: 305-539-8400  
szack@bsflp.com  
uungaro@bsflp.com

*Co-Counsel for Plaintiffs and the Class*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the forgoing was filed on December 28, 2022, via the Court's CM/ECF system, which will send notification of such filing to all attorneys of record.

By: /s/ Adam M. Moskowitz  
ADAM M. MOSKOWITZ  
Florida Bar No. 984280